

BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

September 1, 2004

IN RE:

**PETITION OF COUNCE NATURAL GAS
CORPORATION TO INCREASE ITS RATES**

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**DOCKET NO.
04-00037**

**ORDER APPROVING AMENDED PETITION
TO INCREASE RATES AND REVISED RULES AND REGULATIONS**

This matter is before the Hearing Officer for consideration of the *Petition of Counce Natural Gas Corporation to Increase its Rates* ("Petition") filed on February 4, 2004. A Hearing on the *Petition* was held on July 30, 2004 pursuant to Tenn. Code Ann § 65-5-203. Based upon the record in this docket, the Hearing Officer approves the requested rate increase, monthly charge increases and rule revisions. The parties were notified of this decision by the Hearing Officer on August 31, 2004.

Background

Counce Natural Gas Corporation ("Counce" or the "Company") provides natural gas service to approximately 150 customers in Hardin County, Tennessee. The Company is owned by Tumlinson Engineering, Inc. which also owns a separate gas distribution system in Mississippi. The Counce distribution system was originally owned by Alabama-Tennessee Natural Gas Company. Alabama-Tennessee Natural Gas Company transferred its Certificate of Public Convenience and Necessity ("CCN") to Ted Tumlinson by approval of the Tennessee Public Service Commission ("TPSC") on December 22, 1995 in TPSC Docket No. 95-03379. In

October 2000, the ownership of Tumlinson Engineering, Inc. was transferred to the present owner, Michael D. Horton.

On February 4, 2004, Counce filed its *Petition* with the Tennessee Regulatory Authority ("Authority" or "TRA") for an increase in rates. The *Petition* contained no specific revenue request but did propose to increase the Company's tariff rate from \$2.1304 per thousand cubic feet ("Mcf") to \$6.6449 per Mcf.¹ In addition, the Company proposed certain changes to its General Rules and Regulations including an increase in the amount of deposit required by new customers, a provision for payment for damages to the Company's service lines by the customer, a change in the service line extension policy, a change in the delinquent date for discontinuance of service, and a change in the Company's policy on gas wastage.² Along with the *Petition*, the Company filed testimony from Michael D. Horton, President of Counce, and Stephen J. Swetz, CPA, an outside consultant for Counce.

On March 24, 2004, a Petition to Intervene in this matter was filed by the Consumer Advocate and Protection Division of the Office of the Attorney General ("Consumer Advocate"). During an Authority Conference held on April 12, 2004, Chairman Deborah Taylor Tate, Director Pat Miller and Director Ron Jones, the voting panel assigned to this docket, voted unanimously to grant intervention to the Consumer Advocate and appoint the Authority's General Counsel or his designee to serve as the Hearing Officer in this matter to make findings of fact and conclusions of law, as necessary, and to render an initial decision on the merits of the *Petition*, pursuant to Tenn. Code Ann. § 4-5-301 and § 65-2-111 and such other legal authority as may be provided by law.

Data Requests to the Company were issued by the TRA on February 11, March 19 and May 13, 2004. The Hearing Officer issued an Order on May 4, 2004 establishing a procedural

¹ *Petition for Rate Change and Tariff Increase*, p 2 (February 4, 2004).

² *Id.*, Exhibit 2.

schedule and setting a Hearing date of June 25, 2004. The Consumer Advocate and the Company engaged in discovery pursuant to the procedural schedule. The Company provided information and documentation in support of its *Petition* through responses to the Data Requests issued by the Authority and discovery propounded by the Consumer Advocate. The procedural schedule was later modified and the Hearing date was moved to July 30, 2004 at the request of the parties.

On July 7, 2004, the Company filed an *Amended Petition for a Rate Increase and Tariff Change* ("*Amended Petition*") along with the direct testimony of Michael D. Horton. Mr. Horton's testimony states that the Company revised its initial projections based on rules of the Federal Energy Regulatory Commission ("FERC") and the TRA's Order of March 2, 1999 in Docket No. 98-00308.³ The *Amended Petition* seeks a base rate increase from \$2.1304 per Mcf to \$2.9500 per Mcf as well as an increase in the monthly customer charges from \$5.00 to \$10.00 for Residential customers, from \$10.00 to \$20.00 for Commercial customers, and from \$250.00 to \$300.00 for Industrial customers. The Company also filed revisions of its rules regarding Gas Wastage and Delinquent Bills that reverted back to the language that is presently contained in its existing tariff.

On July 16, 2004, the Company filed a Revised Exhibit 1 to its *Amended Petition*. The Revised Exhibit 1 extends the original Net Income calculation to show the forecasted income under new rates. The analysis shows that the change in rates will produce additional annual revenue of \$30,312 and provide the Company with an annual income of \$62.

On July 28, 2004, the Company and the Consumer Advocate filed a *Stipulation and Agreement Between the Consumer Advocate and Protection Division of the Office of the Attorney General and Counce Natural Gas Corporation* ("*Stipulation*") in this docket which,

³ See *In Re Counce Natural Gas Company Petition for Rate Increase*, Docket No. 98-00308, *Order Approving Report and Recommendation of Hearing Officer and Settlement Agreement* (March 2, 1999)

among other things, states that the Consumer Advocate does not object to the rate increase sought by Counce as set forth in the *Amended Petition*. The Stipulation also states that the rate increase will produce additional annual revenues of approximately \$30,312 and that this increase is necessary in order for Counce to continue operations and provide service to its customers.

Counce's Hearing

The Hearing Officer issued a Notice of Hearing on July 12, 2004. The Hearing in this docket was held before the Hearing Officer on July 30, 2004. The following parties participated in the Hearing through their respective counsel:

Counce Natural Gas Corporation – **Thomas M. McElroy, Esq.**, 301 North Broadway, P.O. Box 1450, Tupelo, Mississippi 38802-1450;

Consumer Advocate -- **Shilina Chatterjee, Esq.**, and **Timothy Phillips, Esq.**, Office of the Attorney General, 426 5th Avenue N., 2nd Floor, John Sevier Building, Nashville, TN 37243;

Michael D. Horton, President, and Candy Horton, an officer, attended the Hearing as representatives of the Company, and Stephen Swetz, CPA, Watkins, Ward & Stafford, PLLC, also appeared as a witness. Hal Novak, Chief of the Energy and Water Division, and Butch Phillips of the Energy and Water Division, participated in the Hearing as TRA Staff.

At the outset of the Hearing, Counce filed the Company's proof of publication showing the increase of rates and the time and place of the Hearing. No one from the public attended the Hearing.

In response to questions from the TRA Staff, the parties stated that the Stipulation included the Company's proposed changes to its Rules and Regulations.⁴ Specifically, the Company has proposed the following changes to its Rules and Regulations:

1. A change in the deposit required by new customers;

⁴ Transcript of Proceedings, p 8 (July 30, 2004)

2. A change in the provision of payment for damages to the Company's service lines by a customer;
3. A change in the service line extension policy;
4. A change in the delinquent date for discontinuance of service; and
5. A change in the Company's policy on gas wastage.

The Company was then questioned as to certain portions of the proposed rules.

The TRA Staff asked questions of the Company as to ambiguity regarding its proposed language concerning damaged service lines. Specifically, the second sentence of Item 9 for this proposed rule reads, "If service line is found to be leaking or damaged, the service line will be repaired or replaced at customer's expense." The TRA Staff expressed concern that this language could be interpreted to mean that the customer has the responsibility to repair a service line when it is found to be leaking or damaged through no fault of the customer. The Company acknowledged that this sentence needed clarification and that it was not the Company's intent to charge the customer when a line was damaged through no fault of the customer.⁵ The Consumer Advocate agreed with this change.⁶ The Company agreed to file revised language to correct this ambiguity.⁷

The Company was also questioned regarding proposed rules relating to Item 12 - Discontinuance of Service for Nonpayment and Item 14 - Gas Wastage. Upon questioning, it was discovered that the Company had inadvertently used the language from its existing rules for these two items in its *Amended Petition* filed on July 7, 2004, rather than the proposed changes in language filed with the original *Petition* of February 4, 2004. The Company acknowledged that the *Amended Petition* did not contain the correct language and stated that it would file

⁵ *Id* at 10.

⁶ *Id* at 13

⁷ *Id* at 11

revised language to correct this error.⁸ The Consumer Advocate did not oppose these changes.⁹

The TRA Staff questioned the Company regarding the depreciation rates it proposed to use for new property. The Company admitted that it has currently fully depreciated its existing plant in service and that none of the original investment was recognized in the Company's Amended Petition.¹⁰ Because the existing plant is fully depreciated, the Company was questioned regarding the appropriate depreciation rate to use for any new plant investment. The Company agreed that it would file a depreciation study with the TRA by the end of 2004 that would address the appropriate depreciation rate to use for future plant additions.¹¹

Post-Hearing Filing

On August 3, 2004, the Company filed its *Revised Proposed New General Rules and Regulations for Counce Natural Gas Company Revised to Conform to the Testimony of Michael D Horton at July 30, 2004 Hearing* ("Revised Rules"). The Revised Rules correct the filing errors regarding Item 12 – Discontinuance of Service and Item 14 – Gas Wastage that were contained in the Company's *Amended Petition*. The Revised Rules also resolve the ambiguity in the language regarding responsibility for damaged lines contained in Item 9 – Company Owned Equipment on Customer's Premises.

Findings and Conclusions

Based upon the record in this docket, the Hearing Officer makes the following findings and conclusions.

Rate Increase

The record shows that the Company will be recovering only its operating expenses if the rate increase requested in the *Amended Petition* is granted in full. Therefore, the Company will

⁸ *Id* at 12 and 15

⁹ *Id* at 13 and 17

¹⁰ *Id* at 18

¹¹ *Id* at 21.

not be able to earn a positive rate of return after these rates are placed into effect. Because the Company will continue to be in an operating loss situation, there is no speculation as to an appropriate amount of rate increase. The Hearing Officer **finds** that the amount of rate increase proposed in the Stipulation is just and reasonable and **approves** a change in the base volumetric rate from \$2.13 to \$2.95 per Mcf and a change in the monthly customer charge from \$5.00 to \$10.00 for Residential customers, \$10.00 to \$20.00 for Commercial customers, and \$250.00 to \$300.00 for Industrial customers. This change in rates will produce additional annual revenue for the Company of approximately \$30,000.

Rules & Regulations

The Company's Revised Rules reflect the changes the Company requested in its *Petition*. The Consumer Advocate did not oppose the proposed changes to the rules. The Hearing Officer **finds** that the Company's Revised Rules are appropriate and **approves** the Company's changes set forth in its Revised Rules.

Depreciation Rates

The Company has agreed to file a depreciation study with the TRA no later than December 31, 2004 in order for the TRA to set depreciation rates on new plant additions. Because the Company does not currently plan to place any new plant in service before the end of the calendar year, this proposed filing date is appropriate. The Hearing Officer **approves** the Company's proposal to file a depreciation study with the TRA by December 31, 2004.

IT IS THEREFORE ORDERED THAT:

1. The Stipulation filed by the parties on July 28, 2004, and amended during the Hearing on July 30, 2004, is hereby approved.
2. Counce's request to increase the base volumetric rate from \$2.13 to \$2.95 per Mcf is granted.

3. Counce's request to increase the monthly customer charge from \$5.00 to \$10.00 for Residential customers, from \$10.00 to \$20.00 for Commercial customers, and from \$250.00 to \$300.00 for Industrial customers is granted.

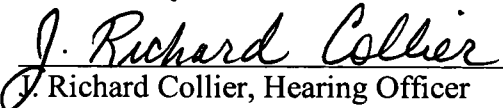
4. Counce's Revised Proposed Rules filed on August 3, 2004 are approved.

5. Counce shall file a depreciation study with the TRA no later than December 31, 2004.

6. Any party aggrieved by the Hearing Officer's decision in this matter may file a Petition for Reconsideration with the Hearing Officer within fifteen (15) days from the date of this Order.

7. Any party aggrieved by the decision of the Hearing Officer in this matter may file a Petition for Appeal with the Tennessee Regulatory Authority within fifteen (15) days from the date of this Order.

8. In the event this Order is not appealed to the Directors of the Tennessee Regulatory Authority within fifteen (15) days, this Order shall become final and shall be effective from the date of entry. Thereafter, any party aggrieved by the decision of the Hearing Officer may file a Petition for Review in the Tennessee Court of Appeals, Middle Section, within sixty (60) days from the date of this Order.


J. Richard Collier, Hearing Officer